

**Plaintiffs' Memorandum in Opposition
to Joint Motion for Summary
Judgment for Failure to Prove Fault
Element of Public Nuisance Claims**

Ex 15 – Hilliard Tr. Excerpts

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
PRESCRIPTION OPIATE)
5 LITIGATION) Case No. 1:17-MD-2804
6)
7) Hon. Dan A. Polster
THIS DOCUMENT RELATES TO)
8 ALL CASES)
9)

10 Thursday, January 10, 2019
11

12 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
13 CONFIDENTIALITY REVIEW
14

15
16 Videotaped Deposition of GARY HILLIARD,
held at Winstead PC, 2728 N. Harwood St.,
17 Dallas, Texas, commencing at 9:06 a.m. on the
above date, before Susan Perry Miller,
18 Registered Diplomate Reporter, Certified
Realtime Reporter, Certified Realtime
19 Captioner, and Notary Public.
20
21

22
23 GOLKOW LITIGATION SERVICES
877.370.3377 ph | fax 917.591.5672
24 deps@golkow.com
25

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1 PROCEEDINGS
 2 GARY HILLIARD,
 3 having taken an oath to tell the truth, the
 4 whole truth, and nothing but the truth,
 5 testified as follows:
 6 EXAMINATION
 7 QUESTIONS BY MR. BOGLE:
 8 Q. Good morning.
 9 A. Good morning.
 10 Q. Can I get your full name,
 11 please?
 12 A. Gary Lawrence Hilliard.
 13 Q. And, Mr. Hilliard, my name is
 14 Brandon Bogle. I'm going to be asking you
 15 some questions today. Before we get into the
 16 substance, though, have you ever had your
 17 deposition taken before?
 18 A. I have not.
 19 Q. Okay. Just a few ground rules
 20 to hopefully make things go as smoothly as
 21 possible for us. I'm going to ask questions
 22 and I'd ask that you wait till I finish my
 23 question before you provide an answer, number
 24 one, to make sure you understand my question;
 25 number two, to allow the court reporter to

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1 more easily transcribe things.
 2 Does that make sense?
 3 A. Yes, it does.
 4 Q. Okay. And if at any point in
 5 time you want to take a break, just let me or
 6 your counsel know. I'm happy to do that.
 7 It's not an endurance contest.
 8 The other thing is if I ask a
 9 question that you don't hear or don't
 10 understand, please ask me to repeat it or
 11 rephrase it and I will do so. Otherwise, I
 12 assume if you're answering my question that
 13 you understood it. Is that fair?
 14 A. Yes.
 15 Q. Okay. Where are you currently
 16 employed, sir?
 17 A. Tech Data Corporation.
 18 Q. Where is that located?
 19 A. The corporate office is in
 20 Clearwater, Florida.
 21 Q. Okay. Are you out of
 22 Clearwater or somewhere else?
 23 A. I'm out of a Fort Worth
 24 facility.
 25 Q. Give me just a general sketch

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1 of what you do at Tech Data. What is your
 2 job?
 3 A. I'm a dangerous goods safety
 4 advisor, so my role is to manage hazardous
 5 materials for our company in the United
 6 States, Canada and Mexico.
 7 Q. Okay. Does Tech Data in any
 8 way, shape or form sell, distribute or deal
 9 in opioids?
 10 A. No. It's all electronics.
 11 Q. All electronics, okay.
 12 When did you start working for
 13 Tech Data?
 14 A. In September 2016.
 15 Q. Okay. And prior to working at
 16 Tech Data, were you employed at McKesson?
 17 A. I was.
 18 Q. Okay. Can you give me the span
 19 of time that you worked for McKesson?
 20 A. From 1997 till 2016.
 21 Q. Okay. And why did you leave
 22 McKesson?
 23 A. I was part of a workforce
 24 reduction.
 25 Q. Okay. Were you given the

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1 opportunity to transfer to another department
 2 or just outright told that they were
 3 eliminating your position and there was no
 4 other position for you?
 5 A. Outright elimination.
 6 Q. Okay. Now, the time from 1997
 7 to 2016 while you were at McKesson, during
 8 that entire span, were you a director of
 9 regulatory affairs?
 10 A. I started as a manager of
 11 regulatory affairs.
 12 Q. Okay. So tell me what time
 13 period you were the manager.
 14 A. It was approximately a year, so
 15 approximately '97-98.
 16 Q. Okay.
 17 A. I don't remember the exact time
 18 frame.
 19 Q. That approximation is good
 20 enough. So approximately 1998 you take over
 21 as director of regulatory affairs. Do you
 22 hold that position until 2016 when you leave?
 23 A. That's correct.
 24 Q. Okay. Do you know what month
 25 in 2016 you left?

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1 what the scope is here.
 2 You also said you handled DEA
 3 registrations and state licensure?
 4 A. Correct.
 5 Q. For what time period did you
 6 have those responsibilities?
 7 A. '97 till 2016.
 8 Q. Okay. You mentioned being
 9 actively involved in the -- I think it was
 10 NWMA? Is that right?
 11 A. HDMA.
 12 Q. Right. I think you mentioned
 13 the predecessor term.
 14 A. NWDA, National Wholesale Drug
 15 Association.
 16 Q. Which then became the HDMA,
 17 right?
 18 A. And now is NDA, I believe, yes.
 19 Q. I think maybe HDA.
 20 A. HDA.
 21 Q. I think so. It doesn't matter.
 22 A. Okay.
 23 Q. Okay. What sort of committees
 24 were you on at NWDA?
 25 A. I was on the federal committees

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1 in reference to DEA, also state committee,
 2 pharmaceutical waste management committee,
 3 transportation committee.
 4 Q. Okay. Let's talk about the
 5 federal DEA committee. What did you do --
 6 what was your involvement with that
 7 committee? What did you do?
 8 A. We would meet typically
 9 annually and with our counterparts from other
 10 wholesalers and sometimes manufacturers, and
 11 we would discuss issues that were happening,
 12 proposed regulations that were coming up.
 13 That's primarily it.
 14 Q. Okay. And so this NWDA was a
 15 trade association for pharmaceutical
 16 distributors primarily, correct?
 17 A. That's correct.
 18 Q. Okay. And so as part of that
 19 association, as a member of that association,
 20 you would have interactions with other
 21 employees of other pharmaceutical
 22 distributors. Is that fair?
 23 A. That's correct.
 24 MR. EPPICH: Object to the
 25 form.

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1 Give me a minute to object, if
 2 you don't mind.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. How frequently would you attend
 5 meetings for NWDA, approximately?
 6 A. Approximately twice a year.
 7 Q. Okay. Would those meetings
 8 generally be attended by employees of other
 9 pharmaceutical distributors as well?
 10 A. That's correct.
 11 Q. Okay. You also mentioned
 12 having responsibility for ARCOS. Can you
 13 tell me what you did related to ARCOS?
 14 A. I would train our employees at
 15 our facilities when they needed training. I
 16 would assist in problems that they may have
 17 understanding what types of code assignments
 18 would be associated with a type of
 19 transaction. If they had error reports that
 20 they needed assistance with, and any
 21 communications from ARCOS corporate, then I
 22 would typically work with them on that.
 23 Q. Okay. And when it came to the
 24 ARCOS training you're referring to, are you
 25 talking about training people at the

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1 distribution centers?
 2 A. That's correct.
 3 Q. All right. So from 1997 to
 4 2007, would you have had responsibility for
 5 regulatory compliance for all of McKesson's
 6 distribution centers?
 7 A. For the pharmaceutical
 8 division.
 9 Q. Okay. Well, let me rephrase it
 10 because I think that's a fair clarification.
 11 So from 1997 to 2007, would you
 12 have had responsibility for compliance with
 13 the Controlled Substances Act as it pertained
 14 to all of McKesson's distribution centers?
 15 A. That would be correct.
 16 Q. Okay. And, now, in 2008, as I
 17 understand it, there were some additional
 18 people added to McKesson's regulatory team.
 19 Is that true?
 20 A. That's correct.
 21 Q. Okay. And so when that change
 22 occurred and additional people were added, as
 23 I understand it, you would then have not been
 24 responsible for all of those distribution
 25 centers when it pertains to Controlled

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1 communications took place between McKesson
2 headquarters and DEA headquarters.
3 QUESTIONS BY MR. BOGLE:
4 Q. Okay. Do you recall what
5 presentations you received in that regard?
6 A. There was a DEA conference
7 where they had a presentation and they were
8 talking about the levels of opioids that were
9 being used out -- illegitimately. I don't
10 recall the exact details of it, but they had
11 a presentation --
12 Q. Okay.
13 A. -- at a national conference.
14 Q. Okay. Would that have been a
15 conference you attended in 2007?
16 A. I don't recall the exact date
17 of that conference.
18 Q. Okay. Did you ever have any
19 personal concern while you were at McKesson
20 that there was an opioid epidemic ongoing?
21 A. No, I didn't.
22 MR. EPPICH: Object to the
23 form.
24 QUESTIONS BY MR. BOGLE:
25 Q. Okay. Are you familiar with

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1 the term "diversion"?
2 A. I am.
3 Q. What do you understand that
4 term to mean?
5 MR. EPPICH: Object to the
6 form. Calls for a legal conclusion.
7 A. Controlled substance
8 pharmaceuticals being utilized outside the
9 course of legal requirements under the CSA.
10 QUESTIONS BY MR. BOGLE:
11 Q. And while you were at McKesson,
12 did you see any instances of diversion of
13 McKesson-supplied opioids?
14 MR. EPPICH: Object to the
15 form.
16 A. Not that I recall.
17 QUESTIONS BY MR. BOGLE:
18 Q. All right. I'm going to hand
19 you what I'm marking as Exhibit 1.1651, which
20 is also Exhibit 1 to your deposition, and
21 that's MCKMDL00498169.
22 (McKesson-Hilliard Exhibit 1
23 was marked for identification.)
24 QUESTIONS BY MR. BOGLE:
25 Q. There you go, sir.

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1 Okay, Mr. Hilliard. What I've
2 handed you as Exhibit 1 you see is an e-mail
3 on the first page and then sort of a
4 PowerPoint slide deck behind it.
5 Do you see that?
6 A. I see that.
7 Q. Okay. And starting with the
8 e-mail on the first page, you see that's an
9 e-mail from Donald Walker dated May 2, 2012,
10 to several individuals, including yourself,
11 right?
12 A. I see that.
13 Q. Okay. And the subject is Know
14 Your Customer.
15 Do you see that subject line?
16 A. Yes, I see that.
17 Q. He says there in the first line
18 in the body: On Monday I will be making a
19 presentation to the ISMC sales force at NSC
20 around Know Your Customer.
21 What was Know Your Customer?
22 A. It's the name of the
23 presentation.
24 Q. Okay. Are you aware of any
25 program that McKesson implemented at any

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1 point in time to know their customers as it
2 related to opioid purchases?
3 MR. EPPICH: Object to the
4 form.
5 A. I don't recall it in that
6 specifics.
7 QUESTIONS BY MR. BOGLE:
8 Q. Okay. The next sentence in the
9 e-mail says: This is intended to be an
10 awareness awakening session that we as a
11 regulatory team will follow up on during the
12 upcoming year.
13 Do you see that?
14 A. I see that.
15 Q. Okay. And then if you look,
16 I'm on page .5, the page numbers at the top
17 right. That says there Government's View of
18 the Problem at the top of that slide.
19 Do you see that?
20 A. I see that.
21 Q. Okay. And in the box on the
22 left it says: Alarming rate of increase of
23 prescription drug abuse beginning
24 approximately five years ago, especially
25 hydrocodone (Vicodin) and opioid pain drugs

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1 (Oxycontin and Oxycodone).
 2 Do you see that?
 3 A. I see that.
 4 Q. Okay. And on the right it
 5 says, the first bullet point: CDC currently
 6 classifies prescription drug abuse as an
 7 epidemic.
 8 Do you see that?
 9 A. I see that.
 10 Q. Does this jog your memory about
 11 receiving any information about a potential
 12 opioid epidemic while you were at McKesson?
 13 MR. EPPICH: Object to the
 14 form. Misstates the document.
 15 A. I vaguely recall the
 16 presentation. I don't recall the details of
 17 the presentation but this would have been
 18 considered a training document.
 19 QUESTIONS BY MR. BOGLE:
 20 Q. Okay. Is this a document you
 21 would have reviewed as a matter of course
 22 when you received it?
 23 A. I don't recall receiving it,
 24 but it does -- it does seem familiar, so
 25 probably in the normal course I would review

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1 it.
 2 Q. Okay. Let's take a look at the
 3 second bullet point here. It says: 27,000
 4 died from prescription drug overdoses in
 5 2007, a five fold increase since 1990.
 6 Do you see that?
 7 A. I see that.
 8 Q. Okay. And the next bullet
 9 point says: During the same time period ten
 10 fold increase in medical use of painkillers
 11 such as oxycodone and hydrocodone.
 12 Do you see that there?
 13 A. I see that.
 14 Q. Okay. Do you ever recall
 15 becoming aware that there was a, during that
 16 1990-2007 time frame, a ten-fold increase in
 17 the use of painkillers like oxycodone and
 18 hydrocodone?
 19 MR. EPPICH: Object to the
 20 form.
 21 A. I don't recall.
 22 QUESTIONS BY MR. BOGLE:
 23 Q. And the next bullet point says:
 24 Today number of overdose deaths involving
 25 prescription pain medication exceeds deaths

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1 from heroin and cocaine combined.
 2 Do you see that?
 3 A. I see that.
 4 Q. And the last bullet point said:
 5 In some states death from prescription
 6 painkiller overdoses surpass those from
 7 traffic accidents.
 8 Do you see that?
 9 A. I see that.
 10 Q. Is that information you recall
 11 being aware of while you were at McKesson?
 12 A. Again, I don't recall the
 13 details of this.
 14 Q. Are you aware that there have
 15 been congressional hearings in the last
 16 couple of years related to the opioid
 17 epidemic?
 18 A. I am.
 19 Q. You are, okay.
 20 I'm going to hand you what I'm
 21 marking as Exhibit 2 to your deposition,
 22 which is Exhibit 1.264. This is a public
 23 document so no Bates numbers.
 24 (McKesson-Hilliard Exhibit 2
 25 was marked for identification.)

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Okay. You see here this is a
 3 document from the U.S. House of
 4 Representatives Committee on Energy and
 5 Commerce from May 4, 2018.
 6 Do you see that?
 7 A. I see that.
 8 Q. Okay. And it's -- the
 9 regarding line says: Hearing entitled
 10 "Combating the Opioid Epidemic: Examining
 11 Concerns About Distribution and Diversion."
 12 Do you see that there?
 13 A. I do see that.
 14 Q. Okay. Have you followed the
 15 outcomes of any of these congressional
 16 hearings on the opioid epidemic?
 17 A. I have not.
 18 Q. You said you were aware of
 19 them, right?
 20 A. I am aware of them but I have
 21 not followed them. I've been out of
 22 pharmaceuticals for a while now.
 23 Q. If you look at the second page
 24 of this document, underneath the chart it
 25 says: The U.S. continues to experience an

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1 suspicious orders?

2 MR. EPPICH: Object to the

3 form.

4 QUESTIONS BY MR. BOGLE:

5 Q. Why that was a component of it?

6 MR. EPPICH: Object to the

7 form.

8 A. A guidance document provided by

9 Rannazzisi.

10 QUESTIONS BY MR. BOGLE:

11 Q. And do you recall when you

12 first saw that guidance document?

13 MR. EPPICH: Object to the

14 form.

15 A. Approximately 2006.

16 QUESTIONS BY MR. BOGLE:

17 Q. Okay. And so prior to

18 receiving that document in approximately

19 2006, it was your personal belief that there

20 was no responsibility for McKesson to block

21 suspicious orders. Is that true?

22 MR. EPPICH: Object to the

23 form. Calls for a legal conclusion.

24 A. It was not a requirement of the

25 CSA.

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1 QUESTIONS BY MR. BOGLE:

2 Q. Okay. And so if I'm

3 understanding your testimony correctly, prior

4 to the implementation of the CSMP in 2008, it

5 was not McKesson's policy to block suspicious

6 orders. Is that true?

7 MR. EPPICH: Object to the

8 form.

9 A. Blocking of the orders was not

10 a requirement under the CSA.

11 QUESTIONS BY MR. BOGLE:

12 Q. Yeah. I'm just asking whether

13 it was a company policy to block suspicious

14 orders prior to 2008. I'm not asking about

15 the CSA right now.

16 MR. EPPICH: Object to the

17 form.

18 A. We complied with requirements

19 under the CSA.

20 QUESTIONS BY MR. BOGLE:

21 Q. Yeah. I'm just asking whether

22 prior to 2008 when the CSMP was implemented,

23 was it McKesson's policy to not block

24 suspicious orders when they were detected?

25 MR. EPPICH: Object to the

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1 form.

2 A. We complied with the CSA

3 requirements.

4 QUESTIONS BY MR. BOGLE:

5 Q. Okay. I guess I don't

6 understand how that applies to my question.

7 I'm just asking if you guys blocked

8 suspicious orders prior to 2008.

9 MR. EPPICH: Object to the

10 form.

11 A. Blocking was not a requirement.

12 QUESTIONS BY MR. BOGLE:

13 Q. So the answer is no, that that

14 wasn't done --

15 MR. EPPICH: Object to the

16 form.

17 QUESTIONS BY MR. BOGLE:

18 Q. -- prior to 2008?

19 A. We complied with the CSA

20 requirements.

21 Q. Okay. I got that that's your

22 answer, but I'm trying to just get a specific

23 answer to a specific question, which is to

24 nail down in time when McKesson, to your

25 understanding, started blocking suspicious

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1 orders for controlled substances. Can you

2 tell me when that started occurring?

3 A. The CSMP, which was about 2008.

4 Q. Okay. I'm going to hand you

5 what I'm marking as Exhibit 3, which is

6 1.1464, and that's MCKMDL00478906.

7 (McKesson-Hilliard Exhibit 3

8 was marked for identification.)

9 QUESTIONS BY MR. BOGLE:

10 Q. And you see this is a letter

11 from the U.S. Department of Justice Drug

12 Enforcement Administration dated

13 September 27, 2006.

14 Do you see that?

15 A. I see that.

16 Q. Is this the guidance document

17 from Mr. Rannazzisi that you were referring

18 to a minute ago?

19 A. Yes, it is.

20 Q. Okay. So you've seen this

21 document before. True?

22 A. Yes.

23 Q. Okay. I want to look at a

24 couple of components of this letter. It

25 says, in the first line: This letter is

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1 A. I don't recall the other states
 2 other than what was listed in the other
 3 letter.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Okay. Well, we looked at
 6 Exhibit 4 a minute ago. One of the
 7 pharmacies listed there was United
 8 Prescription Services.
 9 You recall that?
 10 A. Yes.
 11 Q. You know that's a Florida
 12 pharmacy, right?
 13 MR. EPPICH: Object to the
 14 form. Calls for speculation.
 15 A. That's my recollection.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Okay. We'll look at it in a
 18 minute. I mean, if you don't know, I can
 19 show you.
 20 The next bullet point actually
 21 says: Specifically addressed concerns with
 22 United Prescription Services, a current
 23 customer of McKesson's.
 24 Do you see that?
 25 A. Yes, I see that.

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1 Q. And we do know that was covered
 2 in the September 1, 2005 meeting, right?
 3 A. Agreed.
 4 Q. Their concerns about that
 5 pharmacy?
 6 A. Agreed.
 7 Q. Okay. It continues: On
 8 October 6, 2005, Mr. Mapes called Mr. Gilbert
 9 to discuss comments the E-Commerce Section
 10 had received that McKesson Corp. was not
 11 taking the Internet pharmacy problem
 12 seriously. Mr. Mapes was assured by
 13 Mr. Gilbert that McKesson Corp. was taking
 14 the matters seriously and working to change
 15 their procedures.
 16 Do you see that?
 17 A. Yes, I see that.
 18 Q. Who is Mr. Gilbert?
 19 A. Outside counsel.
 20 Q. So he's you guys' lawyer,
 21 right?
 22 A. Correct.
 23 Q. Okay. And that's on October
 24 5th.
 25 And the next entry is on

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1 October 10. It says: On October 10, 2005, a
 2 DEA investigator from the Tampa District
 3 Office contacted Bill Mahoney at the McKesson
 4 Distribution Center in Lakeland, Florida, and
 5 expressed concerns of hydrocodone sales to
 6 United Prescription Services.
 7 Do you see that?
 8 A. I see that.
 9 Q. Okay. Then the next entry
 10 says: The E-Commerce Section retrieved ARCOS
 11 data which revealed that between October 10
 12 and October 21, 2005, the following alleged
 13 Internet pharmacies received the identified
 14 quantities of hydrocodone.
 15 And then there's one, two,
 16 three, four, five, six pharmacies listed,
 17 right?
 18 A. Yes, that's what's listed here.
 19 Q. Okay. And for this 11-day
 20 period, it's noted in this letter that United
 21 Prescription Services received 252,100 dosage
 22 units of hydrocodone from McKesson, right?
 23 MR. EPPICH: Object to the
 24 form. Foundation.
 25 A. That's what's stated on the

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1 document.
 2 QUESTIONS BY MR. BOGLE:
 3 Q. Okay. And that Universal Rx
 4 received 254,700 dosage units during this
 5 11-day period from McKesson of hydrocodone,
 6 right? That's what the letter states.
 7 MR. EPPICH: Object to the form
 8 and foundation.
 9 A. That's listed on this letter,
 10 yes.
 11 QUESTIONS BY MR. BOGLE:
 12 Q. Okay. And that Bi-Wise
 13 Pharmacy received 158,400 dosage units of
 14 hydrocodone during this 11-day period, from
 15 McKesson, right?
 16 MR. EPPICH: Object to the
 17 form; foundation.
 18 QUESTIONS BY MR. BOGLE:
 19 Q. That's what the letter states.
 20 A. That's what the letter states.
 21 Q. The letter also states that
 22 Avee Pharmacy received 220,200 dosage units
 23 of hydrocodone from McKesson in this 11-day
 24 period, right?
 25 MR. EPPICH: Object to the

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1 form; foundation.
2 QUESTIONS BY MR. BOGLE:
3 Q. That's what the letter states.
4 A. That's what the letter states.
5 Q. The letter also states that
6 Medipharma Rx received 500,900 dosage units of
7 hydrocodone in 11 days from McKesson, right?
8 MR. EPPICH: Object to the
9 form; foundation.
10 A. That's what the letter states.
11 QUESTIONS BY MR. BOGLE:
12 Q. And finally, Accumed Pharmacy
13 received 404,400 dosage units of hydrocodone
14 from McKesson in 11 days, right?
15 MR. EPPICH: Object to the form
16 and foundation.
17 A. That's what the letter states.
18 QUESTIONS BY MR. BOGLE:
19 Q. It continues thereafter and
20 says: Mr. Rannazzisi then addressed the
21 representatives of McKesson Corp. and
22 informed them that it was his concerted
23 opinion based on the information presented,
24 the DEA needed to ask for the surrender of
25 McKesson's Lakeland Distribution Center

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1 registration or DEA would pursue an Order to
2 Show Cause against the DEA registration of
3 the McKesson facility in Lakeland, Florida.
4 Do you see that?
5 A. Yes, I see that.
6 Q. So having a DEA registration
7 surrendered or having an Order to Show Cause
8 brought against a distribution center, those
9 are serious enforcement actions, right?
10 MR. EPPICH: Object to the
11 form.
12 A. They are serious.
13 QUESTIONS BY MR. BOGLE:
14 Q. Okay. And in fact, the DEA did
15 file for an Order to Show Cause against
16 Lakeland after this point in time, right?
17 A. Yes, they did.
18 Q. Okay. Continuing on down in
19 this letter, I'm skipping that paragraph and
20 going to the next one that says, "Through the
21 course of the above."
22 Do you see that?
23 A. Yes, I see that.
24 Q. It says: Through the course of
25 the above discussion, McKesson Corp., by

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1 their own admission, was unable to provide a
2 plausible explanation for the sale of over
3 2 million dosage units of hydrocodone in a
4 21-day period to pharmacies previously
5 identified by DEA to McKesson Corp.
6 Do you see that?
7 A. Yes, I see that.
8 Q. Okay. And then the last
9 paragraph on the bottom of this page
10 references you and says: After the
11 conclusion of this meeting, it was learned
12 from Gary Hilliard of McKesson Corp. that one
13 of the reasons they were not able to realize
14 the full volume of hydrocodone product going
15 out to the Florida pharmacies was that their
16 reports only included the name brand
17 hydrocodone products distributed and was
18 not -- and was leaving out the generic
19 products. It was only after realizing that
20 the generic were not being reported was
21 McKesson Corp. then able to see the large
22 quantities that DEA was bringing to
23 McKesson's attention.
24 Do you see that?
25 A. Yes, I see that.

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1 Q. Okay. And you recall making
2 that statement to somebody at the DEA that
3 after the meeting, you recognized that the
4 reports you guys ran to track controlled
5 substances purchases like this weren't
6 picking up the generic products?
7 MR. EPPICH: Object to the
8 form.
9 A. That's my recollection.
10 QUESTIONS BY MR. BOGLE:
11 Q. That is your recollection?
12 Okay.
13 And what sort of report were
14 you referring to?
15 A. I don't recall the report, but
16 it was based on item number or SKU number, so
17 the identification of the items left out the
18 generic items because it was in error.
19 Q. Okay. So was the report for
20 these pharmacies in Florida run any
21 differently than the reports for any other
22 pharmacies around the country in tracking
23 hydrocodone purchases?
24 MR. EPPICH: Object to the
25 form. Calls for speculation.

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Okay. And what I've handed
 3 you, sir, is another document produced to us
 4 by McKesson related to this Order to Show
 5 Cause proceeding. And you see there's a
 6 government exhibit sticker number 38 for this
 7 one.
 8 Do you see that at the bottom?
 9 A. Yes, I see that.
 10 Q. Okay. And so this data, I'll
 11 represent to you, matches up with their
 12 exhibit numbers they list in the Order to
 13 Show Cause pleadings we just looked at, okay?
 14 A. Okay.
 15 Q. If you have any reason to
 16 disagree with me, let me know. But I looked
 17 at it.
 18 And so if you look here, this
 19 actually has McKesson hydrocodone sales for
 20 October 1, 2005 through January 31, 2006.
 21 Do you see that?
 22 A. Yes, I see that.
 23 Q. And there's a pie chart there,
 24 right?
 25 A. Yes, I see that.

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1 Q. And so, for example, for Avee
 2 Pharmacy, it notes 1,754,800 doses during
 3 this October 1, 2005 to January 31, 2006
 4 period of time for McKesson hydrocodone
 5 sales.
 6 Do you see that?
 7 MR. EPPICH: Object to the
 8 form. Misstates the document.
 9 A. I see what's stated on the
 10 document.
 11 QUESTIONS BY MR. BOGLE:
 12 Q. Okay. Do you have any reason
 13 to think that's not what that's referring to?
 14 A. I don't know enough about this
 15 document to know otherwise.
 16 Q. Okay. And it lists there for
 17 example, as well, Medipharma, 1,252,000 doses
 18 of hydrocodone from October 1, 2005 to
 19 January 31, 2006.
 20 Do you see that in the chart?
 21 A. Yes, I see it on the chart.
 22 Q. And, for example, if you go to
 23 the second page here, so further discussion
 24 on this, and they actually compared these
 25 seven pharmacies to 299 other pharmacies.

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1 Do you see the data there?
 2 MR. EPPICH: Objection to form.
 3 Foundation.
 4 A. I see what's stated.
 5 QUESTIONS BY MR. BOGLE:
 6 Q. Okay. And that chart is titled
 7 McKesson Hydrocodone distributions October 1,
 8 2005 through January 31, 2006.
 9 Do you see that title?
 10 MR. EPPICH: Objection to form;
 11 foundation.
 12 A. I see what's stated on the
 13 document.
 14 QUESTIONS BY MR. BOGLE:
 15 Q. Okay. And there's a sum of
 16 dosage units, and for 299 other pharmacies
 17 the DEA lists 10,767,050 doses of hydrocodone
 18 for 299 pharmacies, right?
 19 MR. EPPICH: Objection to the
 20 form.
 21 QUESTIONS BY MR. BOGLE:
 22 Q. That's the data provided here.
 23 MR. EPPICH: Objection,
 24 foundation.
 25 A. That's what's stated on the

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1 document.
 2 QUESTIONS BY MR. BOGLE:
 3 Q. Okay. And they compare that to
 4 these other seven pharmacies, and just doing
 5 the rough math for these other seven
 6 pharmacies during this three-month period in
 7 time, four-month period in time, there's
 8 almost 7 million doses of hydrocodone to
 9 these seven pharmacies, right? As compared
 10 to these 299 other pharmacies.
 11 MR. EPPICH: Object to form;
 12 foundation.
 13 QUESTIONS BY MR. BOGLE:
 14 Q. You see that math, right?
 15 MR. EPPICH: Object to form;
 16 foundation.
 17 A. I see what's listed on the
 18 document.
 19 QUESTIONS BY MR. BOGLE:
 20 Q. Okay. And that's the math,
 21 right?
 22 MR. EPPICH: Object to the form
 23 and foundation.
 24 A. I see what's written on the
 25 document for the total.

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1 QUESTIONS BY MR. BOGLE:
 2 Q. Okay. And the grand total is
 3 17,136,250, which counts the 299 pharmacies
 4 plus the other seven pharmacies subject to
 5 the Order to Show Cause, right?
 6 MR. EPPICH: Objection,
 7 foundation.
 8 A. I see what's stated on the
 9 form.
 10 QUESTIONS BY MR. BOGLE:
 11 Q. And that's what's stated,
 12 right?
 13 A. That's what's listed on the
 14 form.
 15 Q. Okay. Have you ever reviewed
 16 this exhibit before?
 17 A. In the preparing,
 18 pre-deposition.
 19 Q. Okay. And while you guys were
 20 getting ready for the Order to Show Cause
 21 hearing, I didn't see it in the pleadings --
 22 let me know if you see it anywhere -- was
 23 there any submission by McKesson saying this
 24 data is wrong that the DEA is submitting here
 25 that I just reviewed with you?

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1 MR. EPPICH: Object to form;
 2 foundation. Calls for speculation.
 3 A. I don't know anything about it.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Okay. Well, again, you've got
 6 the pleadings in front of you. If you happen
 7 to see anything that shows that you guys
 8 contested that -- I didn't find anything. If
 9 you find anything that shows that you guys
 10 contested that, let me know during the
 11 deposition, okay?
 12 MR. EPPICH: Object to the
 13 form; calls for speculation.
 14 QUESTIONS BY MR. BOGLE:
 15 Q. And these seven pharmacies
 16 during this period of time, late October
 17 to -- '05 -- strike that.
 18 These pharmacies from October
 19 '05 to January '06 were also some of the
 20 biggest purchasing pharmacies for hydrocodone
 21 in the country, right?
 22 MR. EPPICH: Objection,
 23 foundation.
 24 QUESTIONS BY MR. BOGLE:
 25 Q. You know that, don't you?

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1 MR. EPPICH: Foundation, calls
 2 for speculation. Form.
 3 A. I don't know.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Never heard that before?
 6 MR. EPPICH: Objection, form.
 7 Calls for speculation.
 8 A. I don't recall.
 9 QUESTIONS BY MR. BOGLE:
 10 Q. Okay. Let me hand you another
 11 DEA exhibit for the Order to Show Cause
 12 hearing marked as Exhibit 10, which is
 13 1.1951, Bates number is MCKMDL00496536.
 14 THE REPORTER: 10?
 15 MR. BOGLE: Did I skip one?
 16 I'm sorry, let me get that number
 17 back. I may have skipped -- missing
 18 some stickers here. Oh, I buried it.
 19 Okay. Sorry.
 20 (McKesson-Hilliard Exhibit 8
 21 was marked for identification.)
 22 QUESTIONS BY MR. BOGLE:
 23 Q. So it's actually Exhibit 8 is
 24 Exhibit 1.1951, so correcting the number.
 25 Same document, just correcting the exhibit

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1 number.
 2 Okay. And this again has a
 3 government exhibit number, number 3. You see
 4 that stamp on there?
 5 A. Yes, I see that.
 6 Q. Okay. And this document is
 7 titled Pharmacy Rankings for Hydrocodone,
 8 October 1, 2005 to January 31, 2006.
 9 Do you see that?
 10 A. Yes, I see that.
 11 Q. Okay. And again, it lists
 12 these same seven pharmacies that we've been
 13 talking about, right?
 14 MR. EPPICH: Object to the
 15 form; foundation.
 16 A. I see what's listed here.
 17 QUESTIONS BY MR. BOGLE:
 18 Q. Which is the names of the same
 19 seven pharmacies, right?
 20 MR. EPPICH: Objection to the
 21 form; foundation.
 22 A. They appear to be the same
 23 names.
 24 QUESTIONS BY MR. BOGLE:
 25 Q. Okay. And, for example, if we

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1 dates for each of these, right?

2 A. Yes, there is.

3 Q. And you invoice at the time of

4 sale, right?

5 MR. EPPICH: Objection;

6 foundation, calls for speculation.

7 A. I don't recall if it was the

8 time of sale or date of shipment.

9 QUESTIONS BY MR. BOGLE:

10 Q. Or of shipment, okay.

11 A. Shipment date.

12 Q. All right. So, for example,

13 what we've got here as Exhibit 10 is, I

14 believe, about 600-plus pages of what

15 McKesson deemed for this month to be

16 suspicious Schedule II or Schedule III

17 controlled substance orders, right?

18 MR. EPPICH: Objection to the

19 form.

20 A. These are what showed up on our

21 suspicious order report as -- and then

22 reported to the DEA.

23 QUESTIONS BY MR. BOGLE:

24 Q. Right. But what the whole

25 purpose of this was, you're providing 600 --

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1 in this instance, 600-plus pages to the DEA

2 for this month of suspicious controlled

3 substance sales that McKesson had made from

4 the prior month, right?

5 MR. EPPICH: Objection to the

6 form and the characterization.

7 A. They were submitted for DEA to

8 review. The report is titled "suspicious"

9 but it's orders that need to be reviewed and

10 they were supplied to DEA for review.

11 QUESTIONS BY MR. BOGLE:

12 Q. Okay. So let me make sure I

13 understand that. So when these reports would

14 have been submitted to the DEA, it was not

15 the intent of the regulatory department for

16 the conclusion to be drawn that McKesson

17 believed these were suspicious orders. Is

18 that true?

19 MR. EPPICH: Object to the

20 form; calls for speculation.

21 A. This was part of the Suspicious

22 Order Task Force. This was the format for

23 which industry came to the conclusion to

24 provide this information to the DEA and DEA

25 was good with it. There was DEA inspections

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1 that had occurred in our facilities and there

2 was never an issue with that. So this is the

3 format for which the original documentation

4 was supplied to DEA.

5 MR. BOGLE: I move to strike as

6 nonresponsive.

7 QUESTIONS BY MR. BOGLE:

8 Q. My question was simply that

9 during the time that you were with McKesson

10 in the regulatory department, was it your

11 understanding that the intent was when a DU45

12 report like the one we're looking at here was

13 supplied to the DEA, was that -- was that

14 intended to or not intended to be what

15 McKesson deemed to be suspicious orders from

16 the prior month?

17 MR. EPPICH: Object to the

18 form. It calls for speculation; asked

19 and answered.

20 A. Yeah. Again, it was -- this is

21 what needed to be reviewed. This was not

22 specifically a suspicious order.

23 QUESTIONS BY MR. BOGLE:

24 Q. Okay. So the view during this

25 time period when DU45s were used were that

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1 this is not specifically a suspicious order

2 report. Am I understanding you right?

3 MR. EPPICH: Object to the

4 form. Misstates prior testimony.

5 QUESTIONS BY MR. BOGLE:

6 Q. If I'm misstating it, let me

7 know. I'm trying to understand.

8 A. The title was Suspicious Order

9 Report or Suspicious Purchase Report, but

10 this -- with the vast quantity of orders that

11 are conducted on a daily and nightly basis,

12 this provides a threshold for which to

13 review.

14 And so reviews would be

15 conducted nightly on the reports and they'd

16 be flagged and then submitted to the DEA, and

17 then the report in its entirety would be

18 provided to the DEA on a monthly basis. So

19 they would have all this information.

20 Q. Right. I'm asking about from

21 McKesson's perspective, though, not DEA's

22 perspective. So from McKesson's perspective

23 as you understood it in the regulatory

24 department -- strike that, let me make it

25 even easier.

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1 MR. EPPICH: Object to the
 2 form. Calls for a legal conclusion.
 3 A. I don't know what each of them
 4 did after they conducted that report to the
 5 DEA. I don't know what they kept on file.
 6 There was a notification log for
 7 documentation that they did maintain.
 8 QUESTIONS BY MR. BOGLE:
 9 Q. Okay. So, again, so to the
 10 extent that was done, there should be a log
 11 out there that shows it was done, right?
 12 MR. EPPICH: Object to the
 13 form. Calls for speculation.
 14 A. Part of the SOP was for them to
 15 fill out a log whenever they made contact to
 16 DEA.
 17 QUESTIONS BY MR. BOGLE:
 18 Q. Okay. So going back to the
 19 question I asked a couple minutes ago, in
 20 2007, the DEA specifically notified
 21 McKesson's regulatory department that the
 22 DU45 report, in its view, was not sufficient
 23 to satisfy the requirements of reporting
 24 suspicious orders, right?
 25 MR. EPPICH: Object to the

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1 form. Calls for speculation.
 2 A. I don't recall the exact
 3 verbiage of what was requested.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Okay. Do you remember any
 6 discussion along those lines, that the DU45
 7 wasn't gonna cut it?
 8 MR. EPPICH: Object to the form
 9 and the characterization.
 10 A. I don't recall exactly what was
 11 requested.
 12 QUESTIONS BY MR. BOGLE:
 13 Q. Okay.
 14 (McKesson-Hilliard Exhibit 11
 15 was marked for identification.)
 16 QUESTIONS BY MR. BOGLE:
 17 Q. I'm going to hand you what I'm
 18 marking as Exhibit 1.1823, which is
 19 Exhibit 11 to your deposition, and that's
 20 MCKMDL00574906. And this is titled Summary
 21 of DEA-HDMA Meeting on Suspicious Orders,
 22 Meeting Date: September 7, 2007.
 23 Do you see that?
 24 A. Yes, I see that.
 25 Q. And you would have been a

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1 member of HDMA at this point in time, right?
 2 A. I was a member during this
 3 time.
 4 Q. Okay. What does HDMA stand
 5 for?
 6 A. Healthcare Distribution
 7 Management Association.
 8 Q. And again, that was y'all's
 9 trade association, right?
 10 A. That's correct.
 11 Q. Okay. So looking at this
 12 document, it notes that there are attendees
 13 at this meeting from both HDMA and DEA,
 14 right, at the top?
 15 A. Yes, that's what's stated.
 16 Q. And one of the DEA attendees is
 17 a person we talked about before, Mr. Mike
 18 Mapes, right?
 19 A. Yes, it is.
 20 Q. Okay. And if you go to the
 21 second page of this document, the top bullet
 22 point says: DEA also does not want to
 23 receive suspicious order reports that merely
 24 reflect volumes that went over a threshold;
 25 they wanted reports that are "true"

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1 suspicious orders. Similarly, they do not
 2 want to receive what they called "excessive
 3 purchase" reports which had been used in the
 4 past.
 5 Do you see that?
 6 A. I see that.
 7 Q. Okay. And were you aware of
 8 this discussion that went on with your trade
 9 association and DEA in September 2007?
 10 A. I recall that there was a
 11 meeting.
 12 Q. Okay. And so this information
 13 I just read to you about the DEA's
 14 expectations, that would have been conveyed
 15 to you and your regulatory team, right?
 16 MR. EPPICH: Object to the
 17 form. Misstates prior testimony.
 18 A. I don't recall specifically
 19 receiving it, but it is likely that I did.
 20 QUESTIONS BY MR. BOGLE:
 21 Q. Okay. And I think I can
 22 represent to you this came out of McKesson's
 23 files, so at least somebody at McKesson got
 24 this.
 25 And so what they're referencing

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1 Q. Okay. And you know that they
 2 were specifically talking about the DU45
 3 report, right?
 4 MR. EPPICH: Objection,
 5 foundation.
 6 QUESTIONS BY MR. BOGLE:
 7 Q. It's referenced by name, isn't
 8 it?
 9 MR. EPPICH: Objection,
 10 foundation.
 11 A. I believe it was stated in the
 12 e-mail trail.
 13 QUESTIONS BY MR. BOGLE:
 14 Q. All right. So now that you
 15 have a chance to review the full context of
 16 this entire e-mail chain, do you agree or
 17 disagree with Mr. Gustin's following
 18 statement: Simply reporting
 19 larger-than-usual orders does not, when there
 20 are so many plausible and routine reasons for
 21 orders to be larger than normal -- and "does
 22 not," he's referring to meeting the spirit
 23 and letter of the regulation for reporting
 24 suspicious orders.
 25 Agree or disagree or no opinion

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1 on Mr. Gustin's statement there?
 2 MR. EPPICH: Objection to the
 3 form; calls for a legal conclusion.
 4 A. I don't have an opinion on
 5 his -- on his statement.
 6 QUESTIONS BY MR. BOGLE:
 7 Q. Okay. And I looked to see if
 8 you responded with disagreement to the
 9 statement. I didn't find anything. Do you
 10 have any specific recollection of you
 11 disagreeing with his statement here?
 12 MR. EPPICH: Objection to the
 13 form. Calls for speculation.
 14 A. I don't recall the specifics of
 15 this e-mail.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Okay. Again, I think my
 18 question is different than that.
 19 Do you have a specific
 20 recollection of disagreeing with his e-mail
 21 in writing?
 22 MR. EPPICH: Objection to the
 23 form.
 24 A. I do not have a recollection of
 25 reviewing this e-mail or making a response to

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1 the e-mail.
 2 MR. BOGLE: Okay. I'm going to
 3 something else, so if you want to take
 4 it now or I can plug along if you
 5 want.
 6 MR. EPPICH: That's fine, let's
 7 take a lunch.
 8 THE VIDEOGRAPHER: Off the
 9 record at 12:31.
 10 (Recess taken, 12:31 p.m. to
 11 1:17 p.m.)
 12 THE VIDEOGRAPHER: Stand by.
 13 The time is 1:17 p.m. Back on the
 14 record, beginning of File 4.
 15 QUESTIONS BY MR. BOGLE:
 16 Q. All right, Mr. Hilliard. Just
 17 to reorient ourselves here, earlier in the
 18 deposition, you recall discussing with me the
 19 DEA's investigation of the Lakeland
 20 distribution center regarding distribution of
 21 hydrocodone to seven Florida pharmacies?
 22 A. That's correct.
 23 Q. Okay. And you're aware after
 24 that investigation, the DEA also began
 25 investigating some other distribution centers

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1 within McKesson as to their distribution of
 2 opioids?
 3 MR. EPPICH: Object to the
 4 form.
 5 A. Yes. There was additional
 6 investigations.
 7 QUESTIONS BY MR. BOGLE:
 8 Q. Okay. And ultimately those
 9 investigations culminated in McKesson
 10 entering into a settlement agreement with the
 11 DEA in 2008, right?
 12 MR. EPPICH: Object to the
 13 form.
 14 A. There was a settlement
 15 agreement in 2008.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Okay. And you're aware that
 18 occurred, right? That a settlement occurred
 19 in 2008?
 20 A. Yes, I am.
 21 Q. Okay. And you're aware that
 22 settlement pertained to allegations from the
 23 DEA that McKesson violated the Controlled
 24 Substances Act in distributing opioids from
 25 several of its distribution centers, right?

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1 A. Correct.

2 Q. Okay. Have you seen the

3 settlement agreement itself?

4 A. I have seen it at one time.

5 Q. Okay. All right. I'm going to

6 hand you what I'm marking as Exhibit 13,

7 which is also 1.889, and that's

8 MCKMDL00337001.

9 (McKesson-Hilliard Exhibit 13

10 was marked for identification.)

11 QUESTIONS BY MR. BOGLE:

12 Q. Here you go, sir.

13 Okay. What I've just handed

14 you, Mr. Hilliard, as Exhibit 13 is titled at

15 the top Settlement and Release Agreement and

16 Administrative Memorandum Agreement dated in

17 the first paragraph May 2nd, 2008.

18 Do you see that?

19 A. Yes, I see that.

20 Q. Okay. And do you recognize

21 this to be the settlement agreement we just

22 referenced from 2008?

23 A. Yes.

24 Q. Okay. And if we'd go

25 specifically to -- let's see, my page numbers

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1 are different here. There's an Appendix B

2 about halfway through the document that

3 starts the actual settlement agreement. Do

4 you see where I'm at there? Sorry, my page

5 numbers don't match yours on this so I can't

6 give you a specific number. I'm sorry, I

7 would if I could. For reason -- but that's

8 what the page looks like right there.

9 MR. EPPICH: I think it's on

10 Bates 337012.

11 QUESTIONS BY MR. BOGLE:

12 Q. It says Appendix B at the top

13 left, Settlement Agreement at the top middle.

14 See where I'm at?

15 A. Found it.

16 Q. All right. So this starts the

17 actual settlement agreement itself. So I

18 want to go to the next page that talks about

19 the covered conduct in the agreement, which

20 is number 8 in the middle of the page.

21 Do you see where I'm at?

22 A. Yes, I do.

23 Q. Okay. And A there says:

24 Within the District of Maryland: From

25 January 2005 through October 2006,

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1 McKesson-Landover sold approximately

2 3 million dosage units of hydrocodone to

3 NewCare Pharmacy in Baltimore, and failed to

4 report these sales as suspicious orders to

5 DEA when discovered, as required by and in

6 violation of -- and then it lists the C.F.R.

7 and the U.S.C.

8 And then it says: Further,

9 from August 2006 to February 2007,

10 McKesson-Landover sold large quantities of

11 phentermine-based products to Smeeta Pharmacy

12 in Highland, Maryland, and failed to report

13 these sales as suspicious orders to DEA when

14 discovered, as required by and in violation

15 of -- and again it lists the statutes.

16 Do you see where I'm reading

17 there?

18 A. I see that.

19 Q. Okay. Were you involved at all

20 in investigating whether the allegations the

21 DEA was making here were accurate or not?

22 A. Not that I recall.

23 Q. Okay. Then if you see in

24 section B, and I wasn't going to read this

25 whole section but you can look at it here for

Page 213

1 yourself, this talks about the conduct that

2 we actually covered for the seven

3 pharmacies -- seven Florida pharmacies that

4 were handled by the Lakeland distribution

5 center, right?

6 A. Yes. It's listed here.

7 Q. And that's the same conduct we

8 talked about before, right? That's what they

9 discuss here.

10 A. Yes.

11 Q. Okay. And then in letter C:

12 Within the Southern District of Texas, it

13 says: From February to September 2007,

14 McKesson-Conroe sold approximately 2.6

15 million dosage units of hydrocodone to

16 Mercury Drive Pharmacy and Maswoswe's

17 Alternative Pharmacy and failed to report

18 these sales as suspicious orders to DEA when

19 discovered, as required by and in violation

20 of -- and again it lists the statutes.

21 You see that there?

22 A. I see that.

23 Q. And on the next page, it

24 continues with letters D, E and F. Letters D

25 involve allegations of large quantities of

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1 hydrocodone sent to three Colorado pharmacies
 2 out of the McKesson-Aurora distribution
 3 center from September 2005 to November 2007,
 4 right?
 5 A. I see that.
 6 Q. E involves McKesson-Salt Lake
 7 and distribution of 824,000 units of
 8 hydrocodone, oxycodone, fentanyl and
 9 methadone to the Blackfeet Clinic in
 10 Browning, Montana from January 2005 to
 11 October 2007.
 12 Do you see that?
 13 A. I see that.
 14 Q. Okay. And then finally, there
 15 is, from McKesson-West Sacramento,
 16 allegations of theft or significant loss of
 17 controlled substances on 28 separate
 18 occasions that were not reported timely to
 19 the DEA.
 20 Do you see that?
 21 A. I see that.
 22 Q. Okay. And you know that for
 23 this covered conduct, there was a fine paid
 24 of \$13.25 million by McKesson, right?
 25 A. Correct.

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1 Q. Okay. And as a result of these
 2 investigations by DEA in 2005 and 2006, in
 3 addition to entering the settlement
 4 agreement, McKesson modified its Suspicious
 5 Order Monitoring Program to shift to the
 6 Lifestyle Drug Monitoring Program, right?
 7 MR. EPPICH: Object to the
 8 form. Calls for speculation.
 9 A. The Lifestyle Drug Monitoring
 10 Program was developed in the 2007 time frame.
 11 QUESTIONS BY MR. BOGLE:
 12 Q. Okay. We'll take a look at a
 13 few things related to the LDMP -- you're okay
 14 with me calling it LDMP?
 15 A. Please.
 16 Q. Okay. I think we're talking
 17 about the same thing there.
 18 All right. So I'm going to
 19 hand you what I'm marking as Exhibit 1.1830,
 20 which is Exhibit 14 to your deposition, and
 21 that is, for those keeping track of these
 22 things, MCKMDL00403340.
 23 (McKesson-Hilliard Exhibit 14
 24 was marked for identification.)
 25 --oOo--

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1 QUESTIONS BY MR. BOGLE:
 2 Q. There's yours, sir, and there's
 3 yours.
 4 All right. I've handed you a
 5 PowerPoint deck titled Lifestyle Drugs &
 6 Internet Pharmacies.
 7 Do you see that?
 8 A. I see that.
 9 Q. Okay. And it's noted to be, in
 10 the slide at the far right there, it says
 11 National Operations Conference 2007.
 12 Do you see that reference?
 13 A. I see that.
 14 Q. Okay. Have you seen this slide
 15 deck before?
 16 A. I have seen it before.
 17 Q. Okay. And it's noted to be
 18 created by Donald Walker, who we've talked
 19 about a little bit earlier, right?
 20 A. That's correct.
 21 Q. Okay. And if you go here to
 22 page .3, there's a slide on this PowerPoint
 23 deck titled Public Health Issues.
 24 Do you see where I'm at?
 25 A. I see that.

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1 Q. Okay. The first bullet point
 2 there says: Abuse of prescription drugs has
 3 risen 66% since 2000.
 4 Do you see that reference?
 5 A. I see it.
 6 Q. And the third bullet point
 7 says: Opioid painkillers kill more than
 8 cocaine and heroin combined.
 9 Do you see that as well?
 10 A. I see that.
 11 Q. Okay. Do you know in what
 12 context this information was presented, like
 13 where it was presented?
 14 A. It was an operations
 15 conference. I don't recall if I was there or
 16 not. I was not always invited to them, but I
 17 could have been there.
 18 Q. And then if we go to the next
 19 page, page .4, it says DEA Focus is the title
 20 of this slide.
 21 Do you see where I'm at?
 22 A. I see that.
 23 Q. Okay. And it says -- you see
 24 where it says, "DEA expects"?
 25 A. I see it.

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1 form; misstates prior testimony.
 2 A. No.
 3 MR. EPPICH: Assumes facts not
 4 in evidence.
 5 A. No, I do not recall ever having
 6 any conversations of that nature.
 7 QUESTIONS BY MR. BOGLE:
 8 Q. Okay. I'm going to hand you
 9 what I'm marking as Exhibit 23, which is
 10 1.1804, and that's MCKMDL00543971.
 11 (McKesson-Hilliard Exhibit 23
 12 was marked for identification.)
 13 QUESTIONS BY MR. BOGLE:
 14 Q. There you go, sir.
 15 All right. Let's start at the
 16 last page of the document, .3. There's an
 17 e-mail at the bottom from you, October 23,
 18 2006, to a Sharon Mackarness.
 19 Do you see that?
 20 A. I see that.
 21 Q. Okay. There you say: McKesson
 22 will establish a monthly threshold of 10,000
 23 dosage forms of hydrocodone for all customers
 24 at each of its facilities. Customers
 25 requesting to purchase more than this amount

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1 will be required to provide additional
 2 information on its dispensing practices to
 3 justify amounts above this threshold. Such
 4 information will be reviewed by McKesson
 5 Regulatory Affairs before a customer will be
 6 authorized to purchase more than 10,000
 7 dosage forms per month. McKesson will also
 8 establish thresholds for other controlled
 9 substances purchases.
 10 Do you see that e-mail?
 11 A. I see that.
 12 Q. Okay. So then if you go to
 13 page .2, I'm looking at the e-mail from
 14 Sharon Mackarness back to you, October 26,
 15 2006, at 3:44 p.m.
 16 Do you see that?
 17 A. Yes, I see that.
 18 Q. Okay. The second paragraph she
 19 says to you: JB -- JD brought up a valid
 20 point in the meeting. We are in the business
 21 to sell product. If we could produce a
 22 report (you may already have one) that warned
 23 a customer's approach to the threshold, say
 24 at 85% of their 10,000 dosages, work could
 25 begin on justifying an increase in threshold

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1 prior to any lost sales.
 2 Do you see that?
 3 A. I see that.
 4 Q. Okay. And do you see your
 5 response above in the second sentence in your
 6 next e-mail, and what is that?
 7 A. "I think JD's idea is good."
 8 Q. Okay. And that's the idea
 9 you're referencing, the one I just read
 10 about, right?
 11 A. The one stated in Sharon's
 12 e-mail, yes.
 13 Q. Right, okay. Which talks about
 14 being in the business to sell product and
 15 coming up with a threshold warning style
 16 report that would allow customers to justify
 17 an increase prior to McKesson losing sales,
 18 right?
 19 A. That's what's stated, yes.
 20 Q. Okay.
 21 MR. EPPICH: Are you at a good
 22 place to take another break?
 23 MR. BOGLE: Yeah, I was
 24 actually about to say the same thing.
 25 You read my mind.

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1 MR. EPPICH: Let's go ahead and
 2 go off the record.
 3 THE VIDEOGRAPHER: Off the
 4 record at 2:34.
 5 (Recess taken, 2:34 p.m. to
 6 2:50 p.m.)
 7 THE VIDEOGRAPHER: Stand by.
 8 The time is 2:50. Back on the record,
 9 beginning of File 5.
 10 QUESTIONS BY MR. BOGLE:
 11 Q. All right, Mr. Hilliard. You
 12 recall earlier in the deposition we talked
 13 about the PowerPoint that was presented by
 14 Mr. Mapes at the September 1, 2005 meeting
 15 with McKesson? Do you recall discussing that
 16 generally?
 17 A. Yes, I do.
 18 Q. Okay. If we can pull that back
 19 out, which I believe is Exhibit 4, and I want
 20 to go back to page .9. We talked about this
 21 a little bit before, but that bottom slide
 22 there titled Suspicious Orders, the last
 23 bullet point says: Report suspicious orders
 24 to DEA when discovered.
 25 Do you see that?

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1 There was some collaboration or
 2 agreement that took place whereas we were
 3 sending information directly to DEA based on,
 4 I think, the agreement from 2008.
 5 Q. But if you go down to your
 6 e-mail, your first e-mail response towards
 7 the bottom of the first page, you
 8 specifically say: If a transaction/order is
 9 suspicious, we're not to fulfill the order,
 10 thus nothing to transmit.
 11 Right?
 12 A. That was the discussion point.
 13 Q. Right. But that's exactly the
 14 opposite of what Mr. Mapes told you
 15 September 11, 2007, when he's saying
 16 specifically to report suspicious orders. To
 17 stop the order, to block the order, and
 18 report it, right?
 19 MR. EPPICH: Objection.
 20 QUESTIONS BY MR. BOGLE:
 21 Q. You're saying here in the same
 22 vein there would be nothing to transmit if
 23 that happened.
 24 MR. EPPICH: Object to the
 25 form. Misstates the document.

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1 A. This was developmental
 2 discussions in regards to what -- what and
 3 how things would populate on reports and
 4 transmits, and I honestly don't recall the
 5 specifics or the outcome of this other than
 6 what we were discussing in this
 7 communication.
 8 QUESTIONS BY MR. BOGLE:
 9 Q. Okay. But three -- more than
 10 three years after this first presentation
 11 from Mr. Mapes in September 2005, you guys
 12 are now in August 2008 and you're still not
 13 clear on how to report suspicious orders that
 14 you didn't fill? That's what this indicates,
 15 right?
 16 MR. EPPICH: Object to the
 17 form. Calls for speculation,
 18 misstates the document.
 19 A. I don't recall what all
 20 additional conversations are outside of this
 21 one e-mail communication. But again, this
 22 was our work that we were trying to work
 23 towards obtaining a better program, which was
 24 a CSMP program.
 25 So this was just an element of

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1 that development and discussions on how to
 2 get there, and, again, I don't know what else
 3 was communicated.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. But when you go back to the top
 6 e-mail that you wrote, you're actually
 7 discussing the potential options of how you
 8 might report a suspicious order, right?
 9 MR. EPPICH: Object to the
 10 form.
 11 QUESTIONS BY MR. BOGLE:
 12 Q. How you would even do that.
 13 MR. EPPICH: Object to the
 14 form. Misstates the document.
 15 A. Again, this is bouncing ideas
 16 off of each other, coming up with development
 17 on how these reports would work.
 18 QUESTIONS BY MR. BOGLE:
 19 Q. I guess my question is simply
 20 that we've looked at three documents from
 21 September 2005 to September 2007 where
 22 members of the DEA are expressing that
 23 suspicious orders need to be blocked and
 24 reported when they are blocked.
 25 How could it be possible that

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1 three years later you guys still don't know
 2 how to do that?
 3 MR. EPPICH: Object to the
 4 form. Misstates the document.
 5 Argumentative.
 6 A. The process was difficult. The
 7 process took time. It took time to
 8 implement, it took time for development.
 9 Again, this is just one piece
 10 of that project review and trying to get to a
 11 better program.
 12 QUESTIONS BY MR. BOGLE:
 13 Q. Was it so complicated that it
 14 took more than three years to develop how to
 15 report a suspicious order if it's been
 16 blocked?
 17 MR. EPPICH: Objection to the
 18 form; misstates the document, assumes
 19 facts not in evidence.
 20 A. Again, it took time for the
 21 development. We were working towards doing
 22 the blocking of the transactions and this was
 23 just part of that development process.
 24 QUESTIONS BY MR. BOGLE:
 25 Q. Okay. But, again, we looked at

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1 three documents; Exhibit 4, Exhibit 3, and
 2 Exhibit 20, all where the DEA is saying make
 3 a sales decision, block a sale, report
 4 suspicious orders when they're blocked. Yet
 5 we're looking now in August 2008 and you guys
 6 still don't know how to do that, right?
 7 MR. EPPICH: Objection to the
 8 form; misstates the document, assumes
 9 facts not in evidence, and asked and
 10 answered.
 11 A. It took us until the
 12 implementation of the CSMP in order to get
 13 our systems to where they could appropriately
 14 conduct the blocking.
 15 QUESTIONS BY MR. BOGLE:
 16 Q. And the reporting, it appears
 17 like, too, right? Because you're saying if
 18 they block it, you thought in August 27, 2008
 19 there would be nothing to transmit, no report
 20 to make if you blocked it.
 21 MR. EPPICH: Object to the
 22 form. Misstates the document.
 23 QUESTIONS BY MR. BOGLE:
 24 Q. Isn't that what you're saying
 25 here?

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1 MR. EPPICH: Same objections.
 2 A. I don't recall the context of
 3 this document.
 4 QUESTIONS BY MR. BOGLE:
 5 Q. Okay. Well, I'm looking at
 6 your own statement. I'm not asking you to
 7 interpret anybody else's. You say, on
 8 August 27, 2008, at 5:51 a.m.: If a
 9 transaction/order is suspicious, we're not to
 10 fulfill the order, thus nothing to transmit.
 11 That's exactly what you said,
 12 right?
 13 MR. EPPICH: Objection to the
 14 form; argumentative, asked and
 15 answered, misstates the document.
 16 QUESTIONS BY MR. BOGLE:
 17 Q. Did I read any of that
 18 incorrectly?
 19 A. This was the discussion in 2008
 20 10 years ago. I don't recall what all the
 21 other discussions that were going on. This
 22 was us working on the development process.
 23 Q. My question was simply did I
 24 read any portion of that sentence wrong?
 25 MR. EPPICH: Objection to the

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1 form.
 2 A. You read the e-mail.
 3 QUESTIONS BY MR. BOGLE:
 4 Q. Correctly, right?
 5 MR. EPPICH: Objection to the
 6 form.
 7 A. You read the e-mail.
 8 QUESTIONS BY MR. BOGLE:
 9 Q. I'm just asking if you think I
 10 read something wrong there.
 11 A. Not that I'm aware of.
 12 Q. Okay. And even after this
 13 discussion in August 2008, there were
 14 systematic failures at McKesson in reporting
 15 suspicious orders, weren't there?
 16 MR. EPPICH: Objection to the
 17 form; calls for speculation, assumes
 18 facts not in evidence.
 19 A. Not that I recall.
 20 QUESTIONS BY MR. BOGLE:
 21 Q. Okay. All right. Let me hand
 22 you what I'm marking as Exhibit 25. It's
 23 1.1443. It's also MCKMDL00409453.
 24 (McKesson-Hilliard Exhibit 25
 25 was marked for identification.)

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1 QUESTIONS BY MR. BOGLE:
 2 Q. You see what I've got here is a
 3 letter from November 4, 2014, from the U.S.
 4 Department of Justice, Drug Enforcement
 5 Administration.
 6 Do you see that?
 7 A. I see that.
 8 Q. And it's to a Geoffrey Hobart
 9 at Covington & Burling.
 10 Do you see that being the
 11 recipient?
 12 A. I see that.
 13 Q. And the re: line is
 14 Registration Consequences for McKesson
 15 Corporation for Violations of the Controlled
 16 Substances Act.
 17 Do you see that reference?
 18 A. I see that.
 19 Q. Okay. Let's take a look at a
 20 couple of things here in the letter. If
 21 you'd go to the second page, and I'm looking
 22 at the third paragraph here where it says:
 23 That having been said, we remain concerned
 24 that McKesson fails to appreciate the serious
 25 and systemic nature of the CSA-related